

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

11	SAL J. CARDINALLI,	)	Case No.: 5:12-CV-06356-LHK
12	v.	)	ORDER GRANTING DEFENDANTS'
13	Plaintiff,	)	MOTION TO DISMISS PLAINTIFF'S
14	SUPERIOR COURT OF CALIFORNIA FOR	)	COMPLAINT WITH LEAVE TO AMEND
15	THE COUNTY OF MONTEREY, a California	)	
16	State court, et al.	)	
	Defendants.	)	
		_____	

18 Sal Cardinalli (“Plaintiff”) brings this action against his two brothers, John Cardinalli, Jr.  
19 and Stephen Cardinalli; his father, John Cardinalli, Sr.<sup>1</sup>; his nephews Vincent Cardinalli and John  
20 T. Cardinalli III; the John T. Cardinalli, Jr. and Angela Cardinalli Living Trust and the Stephen P.  
21 Cardinalli and Francesca Cardinalli Living Trust; the Salinas Yellow Cab Co., LLC; and Yellow  
22 Cab, Monterey Airporter, Inc. (collectively, “Defendants”) for declaratory relief, intentional  
23 interference with economic expectancy, conspiracy to defraud, and fraudulent conveyance. ECF

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25 <sup>1</sup> John Cardinalli Sr. is in his nineties and suffering dementia. As a result, John Cardinalli Sr. is not  
26 aware of this suit.

1 No. 1 (“Compl.”) at ¶¶ 7–8, 10, 40–58.<sup>2</sup> In addition, Plaintiff brings claims against John  
2 Cardinalli, Jr.; Stephen Cardinalli; and John Cardinalli, Sr. for partition of real property and unpaid  
3 reasonable rental value of property. Compl. at ¶¶ 59–72. Before the Court is Defendants’ Motion  
4 to Dismiss under Rule 12(b)(1) and 12(b)(6). *See* ECF Nos. 22 (“Mot.”), 26 (“Opp’n”), 29  
5 (“Reply”). For the reasons stated herein, the Court GRANTS Defendants’ Motion to Dismiss  
6 Plaintiff’s complaint with leave to amend.

7 **I. BACKGROUND**

8 This case arises out of a dispute about a family business. In 1976, Plaintiff Sal Cardinalli  
9 and Defendants John Cardinalli, Jr.; Stephen Cardinalli; and John Cardinalli, Sr. purchased  
10 Monterey Checker Transportation, Inc. (“MCT”), a Monterey-based taxicab company. Compl. at ¶  
11 17; Mot. at 3. Each party owned a twenty-five percent share of MCT. Compl. at ¶ 17; Mot. at 3.  
12 Plaintiff alleges that, beginning in September 2002, Defendants froze Plaintiff out of “any  
13 meaningful participation in the management, operation, control, or rental” of MCT and its related  
14 real estate. Compl. at ¶ 61. Plaintiff claims, for example, that Defendants have allowed taxicabs to  
15 dump toxic waste on the real estate owned by MCT and have refused to pay Plaintiff rental  
16 payments owed to Plaintiff as part of his share in MCT despite Plaintiff’s “demand[s] that he be  
17 afforded the rights and privileges of an owner.” Compl. at ¶¶ 61–62, 64, 68.

18 In October 2004, Plaintiff brought a state court action against MCT, Defendants John  
19 Cardinalli and Stephen Cardinalli, their wives, and New Hope, Inc. for declaratory relief,  
20 accounting, partition, breach of fiduciary duty, and an allegation for the involuntary dissolution of  
21 the corporation. *Cardinalli v. Cardinalli*, H032309, 2010 WL 5176852 at \*1–2, 4 (Cal. Ct. App.  
22 Dec. 21, 2010) (unpublished). On March 26, 2007, the state court found for Plaintiff as to his  
23 involuntary dissolution claim but denied his remaining claims. *Id.* at \*1. In particular, the court

24 <sup>2</sup> Michael Cardinalli; Yellow Cab of Monterey County, LLC; the Superior Court of California for  
25 the County of Monterey; and the United States Bankruptcy Court for the Northern District of  
California are no longer defendants in this case. *See* ECF Nos. 16, 24.

1 ordered that Plaintiff's twenty-five percent share in MCT be liquidated and that Plaintiff be  
2 reimbursed for \$283,750. Compl. at ¶¶ 18–19. The California Court of Appeal affirmed this  
3 decision on December 21, 2010. *Cardinalli*, 2010 WL 5176852 at \*15. The judgment became  
4 final in March 2011. Compl. at ¶ 20; Mot. at 4.

5 Two months after the state court's judgment became final, MCT filed for Chapter 11  
6 bankruptcy. Compl. at ¶ 23(d). MCT's filing for Chapter 11 bankruptcy triggered an automatic  
7 stay as to all litigation concerning MCT's debts, so Plaintiff could not sue MCT to collect his state  
8 court judgment. Compl. at ¶ 23(l); *see In re Palmdale Hills Prop., LLC*, 423 B.R. 655, 663 (B.A.P.  
9 9th Cir. 2009) *aff'd*, 654 F.3d 868 (9th Cir. 2011) (“The filing of a bankruptcy petition creates a  
10 bankruptcy estate, which is protected by an automatic stay of actions by all entities to collect or  
11 recover on claims.”). Plaintiff therefore moved to dismiss the bankruptcy petition “on the ground  
12 of fraud” and for “substantive consolidation.” Compl. at ¶ 31. The bankruptcy court denied both  
13 of Plaintiff's motions. Compl. at ¶ 31. Subsequently, Plaintiff and MCT stipulated to convert the  
14 Chapter 11 reorganization to a Chapter 7 liquidation. *In re Monterey Checker Transportation, Inc.*,  
15 No. 11-54837, ECF No. 49 (Bankr. N.D. Cal. Sept. 21, 2011). The bankruptcy court granted the  
16 stipulation. *In re Monterey Checker Transportation, Inc.*, No. 11-54837, ECF No. 50 (Bankr. N.D.  
17 Cal. Oct. 13, 2011). Plaintiff then entered into a stipulation with the trustee overseeing MCT's  
18 Chapter 7 liquidation to lift the automatic stay as to the Defendants so that Plaintiff could file an  
19 action against Defendants in state court. *In re Monterey Checker Transportation, Inc.*, No. 11-  
20 54837, ECF No. 76 (Bankr. N.D. Cal. May 25, 2012); Compl. at ¶ 32. The bankruptcy court  
21 granted this stipulation to lift the automatic stay. *In re Monterey Checker Transportation, Inc.*, No.  
22 11-54837, ECF No. 81 (Bankr. N.D. Cal. May 30, 2012). The bankruptcy court found that  
23 Plaintiff's state law claims against Defendants “[did] not in any way effect [sic] the bankruptcy  
24 proceedings.” *Id.* at 3.

1 Plaintiff filed an action in the Superior Court of Monterey County in April 2012. Compl. at  
2 ¶ 33. Plaintiff alleged eleven claims including conspiracy to defraud, intentional interference with  
3 economic expectancy, and partition of real property. Mot. at 4–5. The state court dismissed all  
4 eleven of Plaintiff’s claims and denied Plaintiff leave to amend for all of his claims except for  
5 conspiracy to defraud.<sup>3</sup> Compl. at ¶ 35. Plaintiff then filed a motion for reconsideration, which the  
6 court denied. Compl. at ¶¶ 36–37. Finally, the court dismissed Plaintiff’s first amended complaint  
7 without leave to amend as to all eleven of Plaintiff’s causes of action. Compl. at ¶ 37. Plaintiff  
8 appealed the trial court’s judgment to the California Court of Appeal, where the action is now  
9 pending. Mot. at 5.

10 After receiving decisions from the bankruptcy court and state trial court, Plaintiff filed the  
11 instant case in this Court on December 14, 2012, alleging state law claims to “hedge his bets”  
12 against an adverse ruling by the Court of Appeal. Opp’n at 6. Defendants move to dismiss  
13 Plaintiff’s complaint due to lack of subject matter jurisdiction and for failure to state a claim. Mot.  
14 at 7–11. Plaintiff filed an opposition, ECF No. 26, and Defendants filed a reply, ECF No. 29.

## 15 **II. LEGAL STANDARD**

### 16 **A. Rule 12(b)(1)**

17 A defendant may move to dismiss an action for lack of subject matter jurisdiction pursuant  
18 to Federal Rule of Civil Procedure 12(b)(1). A motion to dismiss for lack of subject matter  
19 jurisdiction will be granted if the complaint on its face fails to allege facts sufficient to establish  
20 subject matter jurisdiction. *See Savage v. Glendale Union High Sch.*, 343 F.3d 1036, 1039 n.2 (9th  
21 Cir. 2003). In considering a Rule 12(b)(1) motion, the Court “is not restricted to the face of the  
22 pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual

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24 <sup>3</sup> Plaintiff requests that this Court take judicial notice of various documents in the state court  
25 action. ECF No. 25. Defendants have not opposed this request. The Court GRANTS this request  
of documents in a state court action).

1 disputes concerning the existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560  
2 (9th Cir. 1988). Once a party has moved to dismiss for lack of subject matter jurisdiction under  
3 Rule 12(b)(1), the opposing party bears the burden of establishing the court’s jurisdiction, *see*  
4 *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010), by putting forth  
5 “the manner and degree of evidence required” by whatever stage of the litigation the case has  
6 reached, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

7 **B. Leave to Amend**

8 If the Court determines that the complaint should be dismissed, it must then decide whether  
9 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend  
10 “should be freely granted when justice so requires,” bearing in mind that “the underlying purpose  
11 of Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or  
12 technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation  
13 marks omitted). Nonetheless, a court “may exercise its discretion to deny leave to amend due to  
14 ‘undue delay, bad faith or dilatory motive on part of the movant, repeated failure to cure  
15 deficiencies by amendments previously allowed, undue prejudice to the opposing party. . . , [and]  
16 futility of amendment.’” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892-93 (9th Cir.  
17 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

18 **III. DISCUSSION**

19 Defendants contend that this Court lacks subject matter jurisdiction over Plaintiff’s  
20 complaint. Mot. at 6–11. Plaintiff’s contention is that this Court has subject matter jurisdiction  
21 because Plaintiff’s state law claims are “related to” MCT’s bankruptcy proceeding and therefore  
22 this Court has jurisdiction under 28 U.S.C. § 1334(b).<sup>4</sup> Compl. at ¶¶ 2, 41, 43–44; Opp’n at 11–15.  
23 The Court finds that Plaintiff has not adequately alleged subject matter jurisdiction.

24 <sup>4</sup> Plaintiff also suggests that the Court may have federal question jurisdiction under 28 U.S.C. §  
25 1331. This contention lacks merit. Plaintiff alleges six causes of action: (1) declaratory relief to  
26 establish jurisdiction, (2) intentional interference with economic expectancy, (3) conspiracy to

1 Pursuant to 28 U.S.C. § 1334, federal district courts have original, non-exclusive  
2 jurisdiction over claims that are “related to cases under title 11.” 28 U.S.C. § 1334(b). To  
3 establish subject matter jurisdiction under Section 1334(b), Plaintiff needs to demonstrate that his  
4 state law claims against Defendants are “related to” MCT’s Chapter 7 bankruptcy. In the Ninth  
5 Circuit, a non-bankruptcy proceeding is “related” to a bankruptcy proceeding if the non-bankruptcy  
6 proceeding “could conceivably have any effect on the estate being administered in bankruptcy,”  
7 such that “the outcome [of the non-bankruptcy proceeding] could alter the debtor's rights,  
8 liabilities, options, or freedom of action (either positively or negatively) and which in any way  
9 impacts upon the handling and administration of the bankrupt estate.” *In re Fietz*, 852 F.2d 455,  
10 457 (9th Cir. 1988) (citing *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Moreover,  
11 “related to” jurisdiction is not as broad in a Chapter 7 liquidation proceeding as in a Chapter 11  
12 reorganization proceeding. *Bankr. Estate of Leachman v. Harris*, No. 12-CV-4072, 2013 WL  
13 428572 at \*6 (N.D. Cal. Feb. 1, 2013) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 309  
14 (1995)).

15 The Court finds that Plaintiff cannot establish that his state law claims are “related to”  
16 MCT’s bankruptcy proceedings. The bankruptcy court’s order lifting the automatic stay against  
17 Defendants is instructive.<sup>5</sup> After reviewing Plaintiff’s state law complaint, the bankruptcy court

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18 defraud, (4) fraudulent conveyance, (5) partition of real property, (6) claim for unpaid reasonable  
19 rental value of property. Compl. at ¶¶ 40–72. Five of these causes of action are California state  
20 law claims, which do not raise a federal question. The claim for declaratory relief does not confer  
21 jurisdiction. “The declaratory judgment statute, 28 U.S.C. § 2201, does not create an independent  
22 basis for federal jurisdiction.” *Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir. 1980). The Court finds  
23 that no federal question underlies Plaintiff’s declaratory relief cause of action. Further, Plaintiff’s  
24 contention that his due process rights would be violated if this Court did not exercise jurisdiction is  
25 frivolous and insufficient to confer jurisdiction. *See Hoye v. Sullivan*, 985 F.2d 990, 991–92 (9th  
26 Cir. 1993) (holding that non-colorable constitutional arguments are not sufficient to confer subject  
matter jurisdiction).

27 <sup>5</sup> This is particularly important in light of the fact that this Court would refer this case to the  
28 bankruptcy court if this Court were to find “related to” subject matter jurisdiction. In this district,  
“all cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to a  
case under Title 11 are referred to the Bankruptcy Judges . . . except as [otherwise] provided.”  
B.L.R. 5011-1.

1 found that Plaintiff's state law claims against Defendants "[do not] affect the administration of  
2 [MCT's] Bankruptcy in any manner ... [and] will not in any way effect [sic] the bankruptcy  
3 proceedings." *See In re Monterey*, ECF No. 81 at 3. The bankruptcy court also noted that  
4 "Monterey Checker Transportation, Inc's interests and damages are separate and apart from  
5 Plaintiff's interests and damages." *Id.* Based on these reasons, the bankruptcy court allowed  
6 Plaintiff to sue Defendants in state court. The same considerations are relevant here, especially in  
7 light of the fact that the automatic stay (that the bankruptcy court lifted) and Section 1334(b) have  
8 the same purpose, diminishing the risk of creditors unfairly collecting from the debtor outside of  
9 bankruptcy proceedings. *See Boucher v. Shaw*, 572 F.3d 1087, 1093 (9th Cir. 2009) (plaintiff's  
10 claim was not "related to" bankruptcy proceeding because it was not an "alternative route to recoup  
11 property of the estate"); *see also* H.R. Rep. 95-595, 49, 1978 U.S.C.C.A.N. 5963, 6010 (the  
12 purpose of Section 1334 is to eliminate "forum shopping . . . and the dissipation of assets and the  
13 expense associated with bifurcated jurisdiction . . ."); *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850,  
14 862 (Bankr. C.D. Cal. 2008) (one of the main purposes of automatic stay is to prevent creditors  
15 from unfairly recovering from the debtor by filing first in court).

16 MCT is not a defendant in Plaintiff's state court action, and Plaintiff does not name MCT as  
17 a defendant in the instant case. Plaintiff has not alleged that Defendants will be indemnified by  
18 MCT if Plaintiff prevails on his state law claims or in the instant case. Plaintiff has not shown that  
19 the outcome of his claims against Defendants will affect MCT's bankruptcy estate or the  
20 administration of MCT's liquidation proceeding. Accordingly, Plaintiff's claims are unrelated to  
21 MCT's bankruptcy.

22 Because Plaintiff has not pleaded that his state law claims against Defendants have any  
23 effect on MCT's bankruptcy proceeding, Plaintiff's claims lack "related to" jurisdiction under  
24 Section 1334, and thus the Court lacks subject matter jurisdiction in this case. *See Kokkonen*, 511  
25  
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1 U.S. at 377 (party asserting subject matter jurisdiction bears the burden of establishing subject  
2 matter jurisdiction).<sup>6</sup>

3 **III. CONCLUSION**

4 Because Plaintiff does not provide adequate grounds to establish federal subject matter  
5 jurisdiction, the Court GRANTS Defendants' Motion to Dismiss Plaintiff's complaint pursuant to  
6 Rule 12(b)(1). Under Rule 15(a), leave to amend generally shall be denied only if allowing  
7 amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the  
8 moving party has acted in bad faith. *See Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532  
9 (9th Cir. 2008). Because none of these conditions is met, the Court finds it appropriate to grant  
10 Plaintiff leave to amend its complaint and plead additional facts that go to subject matter  
11 jurisdiction. Any amendment to the complaint must be filed by December 1, 2013. Failure to cure  
12 deficiencies identified in this Order will result in the dismissal of these claims with prejudice. No  
13 new causes of action or parties may be added without leave of the Court or stipulation by the  
14 parties pursuant to Federal Rule of Civil Procedure 15.

15 **IT IS SO ORDERED.**

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17 Dated: November 7, 2013

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LUCY H. KOH  
United States District Judge

6 Plaintiff expresses concern that if this Court finds that it lacks jurisdiction over Plaintiff's causes of action, that will leave Plaintiff without a forum to substantively adjudicate his claims because the state court found that the federal court had exclusive jurisdiction over Plaintiff's claims. Opp'n at 10-11. This Court does not find Plaintiff's claim persuasive. Plaintiff has not demonstrated that the state court dismissed Plaintiff's claims on jurisdictional grounds. Rather, the state court documents in the record demonstrate that Plaintiff's claims were dismissed on the merits. *See* ECF No. 25 at 28 (dismissing several of Plaintiff's causes of action on res judicata grounds).